

DOCUMENT RESUME

ED 151 925

EA 010 421

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TITLE In-School Punishment for Out-of-School Offenses.
INSTITUTION Georgia Association of Middle School Principals,
Athens.
PUB DATE 77
NOTE 7p.
JOURNAL CIT GMSJP Journal; v1 n2 pp54-59 Fall 1977
EDRS PRICE MF-\$0.83 HC-\$1.67 Plus Postage.
DESCRIPTORS *Court Litigation; Discipline Policy; Drug Abuse;
*Due Process; Elementary Secondary Education;
*Expulsion; *Student Rights; *Suspension

ABSTRACT

This paper examines the reported decisions, one unreported decision, and two Attorney Generals' opinions that deal with school punishment for the use of drugs and alcohol off campus and with suspensions pending criminal charges for student offenses committed off school property. (Author)

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IN-SCHOOL PUNISHMENT FOR OUT-OF-SCHOOL OFFENSES

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EDUCATION & WELFARE
NATIONAL INSTITUTE OF
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Historically, public school officials have often reacted arbitrarily and capriciously in the exclusion of students from school for out-of-school offenses. The case law that deals with suspensions and expulsions for out-of-school offenses has not been established by the Supreme Court, but the lower federal and state courts seem to hold for the student if the public school officials do not adhere to the Constitution in a reasonable and prudent manner.

This paper examines the reported decisions, one unreported decision, and two Attorney Generals' Opinions that deal with school punishment for the use of drugs and alcohol off campus and with suspensions pending criminal charges for student offenses committed off school property.

School Punishment for the Use of Drugs and Alcohol Off Campus

The punishment by school officials of students for the use of drugs and alcohol off-campus must be reasonable and prudent. In fact, school and school board policies, state board policies, and state statutes that govern off-campus offenses must be constitutional. Additionally, the fundamental and property rights guaranteed to all people, including students, by the First and Fourteenth Amendments must not be violated.

In a Texas Federal District Court (Caldwell v. Cannady), four high school students were suspended from school for the remainder of the semester for an alleged violation of a policy that prohibited the possession of drugs off school property. The plaintiffs brought action seeking a permanent injunction restraining school officials from interfering with or prohibiting the students' attendance at school. The court held for the plaintiffs and ordered the school officials to reinstate the plaintiffs under a temporary injunction. The court also ordered one of the plaintiffs to request a hearing before the State Commissioner of Education as provided by the Texas Code because the school officials failed to follow their own procedural due process rule.

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In a State District Court case in New York (Howard v. Clark), several students were suspended from school because they had been arrested and charged with the criminal possession of a hypodermic instrument and drugs off school property. Hence, the plaintiffs petitioned the board to be reinstated as full-time students. The courts held that the school officials exceeded their power in suspending the plaintiffs on the grounds that they had been accused of the possession of drugs off-campus. As a result, the petition was granted and the board was ordered to permit all of the petitioners to attend school as full-time students. Additionally, the court ordered the record of the suspensions to be removed from the students' school records.

The unreported Federal District Court case, Taylor v. Grisham, addresses the point of policy formulated to exclude students from school for the use of drugs off school property. In this case the court held that:

Lengthy school suspensions for smoking marijuana off-campus grounds pursuant to a regulation interpreted by school officials to include within its scope possession of dangerous drugs anywhere at any time by any person enrolled as a student was unconstitutional. The court finds the policy to be unconstitutionally vague and overboard on its face, and unconstitutionally applied. If any automatic permanent rule is applied, it is a violation of due process. Thus, the school authorities must make independent judgment on the question of what penalty to assess when a valid school regulation is violated.

In the case of O'Connor v. Board of Education, a student's athletic awards in football and wrestling were forfeited because he was seen drinking beer off school property and was reported to the school officials by one of his coaches. This decision was based on a code of conduct that governed the high school athletic teams. The code stated that: "Smoking and drinking are undesirable for high school athletes" (p. 799). It also stated that: "If athletes violated the code any time during the school year his letter would be forfeited" (pp. 800-801). However, the plaintiff petitioned the school officials because his letters were forfeited and because he was denied procedural due process. The court held for the plaintiff because he was not afforded minimal standards of administrative due process and the petition was granted.

A district State Court in Iowa upheld a rule adopted by the Iowa High School Athletic Association concerning drinking and the student appealed. However, the Supreme Court of Iowa held that: "The rule adopted by the Athletic Association governing student participation in interscholastic

athletic events on a student who was in an automobile containing beer, with knowledge of the presence of beer, when beer was discovered by an officer, was invalid and unreasonable" (O'Conner, p. 803). The decision of the district court was reversed.

The Federal, District, and State Court decisions discussed in this paper, concerning school punishment for the use of drugs and alcohol off school property, held for the student. Admittedly, the defendants in the cases examined did not afford their plaintiffs equal protection and due process guaranteed by the Fourteenth Amendment before their awards were forfeited and before they were excluded from school.

Suspension Pending Criminal Charges

In many instances school officials have excluded students from school arbitrarily and capriciously for off-campus offenses pending criminal charges. To date, there have been no reported Federal Court cases dealing with this issue. However, this issue has been addressed in several State Court cases and by the opinion of Attorney Generals from the states of Wisconsin and Nevada.

The Superior Court of New Jersey, in the case of R. R. v. Board of Education, ordered the board of education to show cause why a high school student was not given a preliminary hearing nor a full hearing before he was suspended. The plaintiff in this case was involved in a stabbing incident in his neighborhood off-campus, and the school officials suspended him without a hearing. This action was taken because the school officials believed the plaintiff was a danger to himself, to others, and to school property by virtue of his after-school conduct.

The court ordered the school officials to readmit the plaintiff and to give him extra instructions so that he could catch up with his classes. The readmission was conditioned, however, upon his submitting to an examination by the school psychiatrist.

A New York State Court (Matter of Manigaulte) held that a student was not entitled to a court order prohibiting a New York Board of Education from conducting a disciplinary hearing relative to her conduct while she was under criminal charges based on the same conduct. The student contended that to defend herself in the disciplinary hearing she would have to testify; therefore, her right to remain silent in the criminal proceeding would be abrogated. The Court of Appeals held that:

It would be an improper exercise of discretion to grant such a prohibition since the courts may not assume that administrative bodies will

violate the rights of individuals in an administrative hearing; if rights are involved, the individual's remedy lies in review of the determination. The student's request for a bill of particulars to the school charges was denied because the notice of the charges given complied with the New York Education Law, which required only that she have an opportunity for a fair hearing, upon reasonable and fair notice.
(p. 322)

The petition was granted. Thus, the Board of Education was not prohibited from conducting the hearing.

Another case pending criminal charges that dealt with the exclusion of students from school was the case of Whittington v. Barr. In this case the Court of Appeals ordered a high school under a court release order to allow a student to attend classes and to participate in activities, or to provide him with a tutor. Prior to this order, the school passed a resolution to employ the services of a tutor for the plaintiff to enable him to continue his studies and to receive full credit for the courses completed.

The court held that the respondents had complied with all aspects of the order prior to the date issued. Therefore, the case was moot, and the writ should not have been issued. Thus, the judgment of the Court of Appeals was reversed.

In Wisconsin (1969), the Attorney General ordered the State Superintendent of Schools to temporarily reinstate a student expelled from school by a local school board pending the superintendent's decision of an appeal made pursuant to a Wisconsin Statute, upon finding that the exclusion would cause the students irreparable harm.

The Attorney General of Nevada stated that:

To suspend a student accused of a crime committed off-campus prior to a determination by the courts as to the guilt or innocence of the defendant would be to punish without proof, thus, violating the ancient rule of law that a person is presumed innocent until proven guilty beyond a reasonable doubt.
(1969)

He further stated that:

A student should not be suspended from engaging in any school activity because of a criminal charge involving an act committed off school property, pending a determi-

nation of guilt or innocence by a court of competent jurisdiction.

According to the court decisions and the Attorney Generals' Opinions examined in this research, school officials cannot exclude students from school for criminal offenses pending court action for a crime committed off school property.

Conclusions

The Supreme Court of the United States has held that students are entitled to Constitutional protection (*Goss v. Lopez*). Although this court has not decided a case involving the application of this protection for in-school punishment for out-of-school offenses, the lower Federal and State Courts and Attorney Generals' Opinions have held that students who commit criminal acts off-campus that do not disrupt or interfere with the safety and health of the students on campus are not punishable in-school by school officials.

Moreover, certain inferences can be made from the cases cited in this research. In my opinion, a student cannot be excluded from school for being charged with committing rape, shoplifting, using drugs and alcohol, committing assault and battery, and other off-campus crimes unless school officials have reasonable cause to believe the presence of that student constitutes a threat of danger or harm to others. Additionally, if such acts are committed off school property and school officials feel that there is probable cause for them to react to the situation, the students must be given equal protection, due process, and other rights that are guaranteed by the Constitution.

REFERENCES

- Caldwell v. Cannady, 340 F. Supp. 835 (Tex. 1972).
- Goss v. Lopez, 419 U. S. 565 (1975) Tinker v. Des Moines Independent Community District, 393 U. S. 503 (1969).
- Howard v. Clark, 59 Misc. 2d 325, 399 N.Y.S. 2d 65 (1969).
- Matter of Manigaulte, 63 Misc. 2d 765, 313 N.Y.S. 2d 322 (1970).
- O'Connor v. Board of Education, 316 N.Y.S. 2d 799 (1970).
- Op. Att'y Gen., (Nev. 1969).
- Op. Att'y Gen., (Wisc. 1969).
- R. R. v. Board of Education of the Schore Regional High School District, 263 A. 2d 180 (1970).
- State Ex. Rel. Whittington v. Barr, 249 N.E. 2d 322 (1970).
- Taylor v. Grisham, C.A. No. A-75-Ca-13, W.D. Texas, Opinion, Clearinghouse Review No. 15, 925 (1975).